

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
CARMINE TRAMUNTI, et al.,  
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

253  
DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(15) - Pages 2230 to 2390

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2 UNITED STATES OF AMERICA

vs.

73 Cr. 1099

3 CARMINE TRAMUNTI, et al.

4 New York, February <sup>21</sup>~~14~~, 1974;  
5 10.00 A.M.

6 Trial resumed.  
7 - -

8 (In open court; jury not present.)

9 THE COURT: I received the objections to that  
10 part of the charge which I proposed to you I believe on  
11 Monday. I received them from Mr. Herbert Siegal, from  
12 Mr. Ivan Fisher, Mrs. Nancy Rosner and from the govern-  
13 ment. Are there any others?

14 MR. ELLIS: Your Honor, I will have some within  
15 an hour. They are being typed and brought down this  
16 morning.

17 THE COURT: All right.

18 MR. CURLEY: I am in the same category. They  
19 are being typed now, your Honor.

20 MR. SIEGEL: Your Honor, I would just like the  
21 record to be clear that I am joining with Mr. Fisher on  
22 the exceptions to the charge.

23 THE COURT: Oh, yes. Anybody who has a gripe  
24 that can help anybody inures to the benefit of all those  
25 who can be helped.

MR. WARNER: Your Honor, I will have mine, unfortunately, in tomorrow. The only addition that I have to the exceptions made by Mr. Fisher and Mrs. Rosner is a short addition to the point made in regard to the Padgett case.

THE COURT: Mr. Warner, I think you heard me yesterday. Yesterday was the deadline. I extended that to today. Today is the deadline.

I am sorry I have to be this way about it, but I have to. I have to get this show on the road.

Yes, Mr. King.

MR. KING: Judge, I hope I am not too late, but I too want to join Mr. Fisher in that motion.

THE COURT: All right. I understand that the other attorneys wish to cross-examine Mr. Provitera are Mr. Panzer, Mr. Pollak, Mr. Leighton and Mr. Sunden.

MR. KING: Judge, I will have just one more question.

THE COURT: All right. Is anyone here covering for Mr. Dowd?

MR. CURLEY: I will, your Honor.

THE COURT: Mr. Russo, is he here?

Mr. Russo, do you agree to have Mr. Curley cover for Mr. Dowd?



1           MR. RUSSO: Yes.

2           MR. WARNER: Your Honor, it's expected that Mr.  
3 Richman will be in, but until he arrives I will be covering  
4 for Mr. Tolopka.  
5

6           THE COURT: Mr. Tolopka, you do consent?

7           DEFENDANT TOLOPKA: Yes, sir.

8           THE COURT: All right.

9           MR. POLLAK: Does your Honor want me to state  
10 for the record what we discussed in the robing room?

11          THE COURT: Just a minute. Mr. Rosenbaum.

12          MR. SUNDEN: I am covering for Mr. Rosenbaum.

13          THE COURT: Mr. D'Amico, do you agree to have  
14 Mr. Sunden --

15          DEFENDANT D'AMICO: Yes.

16          THE COURT: All right. Yesterday afternoon after  
17 you gentlemen left we had a hearing in connection with the  
18 identification of the defendant Salley.

19          Mr. Pollak, I think you have something to say  
20 in that connection.

21          MR. POLLAK: Yes, your Honor. At the break  
22 yesterday afternoon I indicated that I would be calling  
23 Agent Moore as an additional witness. On reflection, I  
24 don't think that will be necessary.

25          However, I would respectfully ask for a con-



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2 tinuance of the hearing at this time because my client gave  
3 me certain information which leads me to think there is an  
4 outside possibility we might be introducing some additional  
5 evidence in connection with the hearing. I will be in a  
6 position to advise the Court after the luncheon recess.

7 THE COURT: All right.

8 Mr. Phillips, I understand you have an applica-  
9 tion.

10 MR. PHILLIPS: -I would like to call, your Honor,  
11 a very short witness out of turn at this point, before the  
12 cross-examination of Mr. Provitera continues, and it applies  
13 to the defendant D'Amico.

14 MR. SUNDEN: I am covering for Mr. Rosenbaum,  
15 but this is unexpected. I believe Mr. Rosenbaum is  
16 going to be here this afternoon. I would ask that we defer  
17 that witness until this afternoon.

18 Mr. Rosenbaum, may I state, anticipated that this  
19 morning we would be resuming the cross-examination of  
20 Mr. Provitera.

21 THE COURT: Is it possible, Mr. Sunden, you  
22 could call Mr. Rosenbaum?

23 MR. SUNDEN: Sure. I will call his office.

24 THE COURT: Yes, that is what I mean. If you  
25 go into the robing room you can call from there. Do you

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2 want his phone number?

3 MR. SUNDEN: Yes.

4 THE COURT: Here it is.

5 Under all the circumstances, I think at least  
6 for now we will proceed with the cross-examination of Mr.  
7 Provitera. We might as well get started.

8 By the way, we lost count, apparently, of the  
9 3500 material. I don't know who is in charge of it, but  
10 we are going to have to remark the last two items which  
11 were marked. I believe the last two items were marked  
12 as 3577 and 3578.

13 MR. ENGEL: That's correct, your Honor.

14 THE COURT: We already had a 3577. So the thing  
15 which was marked as 3577 is now going to be marked as  
16 3579. There is no need to introduce any extra added  
17 confusion into the record.

18 MR. ENGEL: That would be Mr. Provitera's  
19 debriefing report.

20 THE COURT: The debriefing is now Government's  
21 Exhibit 3579.

22 (Government's Exhibit 3579 marked for  
23 identification.)

24 MR. PANZER: Your Honor, on that point, there  
25 is no date on the transcript that I have. Could the



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2 government tell me what date he was debriefed?

3 MR. ENGEL: The government can't tell you that,  
4 Mr. Panzer, but it would be some time in July or June,  
5 I think, of last year.

6 MR. PANZER: 1973?

7 MR. ENGEL: Yes.

8 MR. PANZER: Thank you.

9 (Jury present.)

10 P A S Q U A L E P R O V - I - T - E - R A, --resumed.

11 THE COURT: Mr. Provitera, you recall that you  
12 were placed under oath yesterday. That oath remains today.

13 Do you understand that, sir?

14 THE WITNESS: Yes, sir.

15 THE COURT: Mr. King, you said you had some  
16 questions.

17 CROSS EXAMINATION CONTINUED

18 BY MR. KING:

19 Q Mr. Provitera, your only contact, as you claim,  
20 with Mr. Gamba was to pick up packages from him, is that  
21 correct?

22 A Yes.

23 Q Do you know of your own knowledge whether Mr.  
24 Gamba sold any of these packages?

25 A No, I don't.

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Provitera-cross

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2 Q Do you know of your own knowledge whether he  
3 distributed any of these packages?

4 A No, sir.

5 MR. KING: I have no further questions.

6 THE COURT: Mr. Panzer.

7 MR. PANZER: May I proceed?

8 THE COURT: Yes.

9 CROSS EXAMINATION

10 BY MR. PANZER:

11 Q Mr. Provitera, yesterday I believe you testified  
12 about going up to University Avenue back in January or  
13 February of 1970. Do you recall that?

14 A Yes. 1972.

15 Q When you were up in that apartment you say that  
16 you were introduced to a person by the name of Hattie Ware,  
17 is that right?

18 A Yes.

19 Q Do you have any pictures of that introduction?

20 A Any pictures?

21 Q Yes. Did you take any pictures while you were  
22 up there?

23 A No.

24 Q Did you tape record any of your conversations  
25 while you were up there?



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Provitera-cross

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2 A No, I didn't.

3 Q Mr. Provitera, you described an incident in the  
4 bedroom on that date back in January or February, 1972.  
5 Do you recall that?

6 A Yes.

7 Q The bedroom, when you go into the bedroom of  
8 that apartment is there a door that closes?

9 A Yes.

10 Q Was that door closed when you were in that bed-  
11 room?

12 A To the best of my recollection, it was.

13 Q And Hattie Ware was not in that bedroom at that  
14 time, isn't that true?

15 A That's true.

2 16 Q I believe you also testified that a subsequent  
17 time while you were waiting for Basil you went up to  
18 University Avenue and you say again Hattie Ware was there,  
19 isn't that true?

20 A Yes.

21 Q You say that there were at that time a number  
22 of neighbors in the apartment while you were there. Do  
23 you remember that?

24 A Yes.

25 Q Do you know the name of any of those neighbors?

1  
2 A No, I don't.

3 Q Those neighbors were in conversation for approxi-  
4 mately 15 minutes I believe you testified, right?

5 A Yes.

6 Q Do you remember any of the conversation?

7 A No, I don't.

8 Q I believe you also testified that on a subse-  
9 quent occasion you saw Basil in the street, right?

10 A Yes.

11 Q And I believe you said you made a delivery to  
12 him in the street, right?

13 A In the car, from the street to the car.

14 Q I believe you also testified yesterday that  
15 there was a woman with him at that time.

16 A No, I didn't testify that there was a woman at  
17 that time.

18 Q Didn't you testify as to one of your deliveries  
19 in the Bronx you saw Mr. Basil with a woman?

20 A Yes.

21 Q And didn't you say that at least on two occasions  
22 you saw that woman?

23 A Yes.

24 Q Was that woman Hattie Ware?

25 A No.



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2                   Q     After a while you stopped delivering at Univer-  
3                   sity Avenue, right?

4                   A     Yes.

5                   Q     And that was around the time you told your  
6                   brother Harry, "I don't want to go up to University Avenue  
7                   any more," right?

8                   A     Right. ....

9                   Q     You said, "I didn't fit in up there," right?

10                  A     Right. ....

11                  Q     Was that because you didn't like black people?

12                  A     No.

13                  Q     At any rate, you didn't want to go back up to  
14                  University Avenue, right?

15                  A     Right.

16                  Q     By the way, Mr. Provitera, prior to testifying  
17                  on this case were you shown photographic pictures of some  
18                  of the defendants on trial in this case?

19                  A     Yes.

20                  Q     And you were shown these pictures by the govern-  
21                  ment, isn't that correct?

22                  A     Yes.  
23  
24  
25

1  
2 Q By the way, while you were going up to Uni-  
3 versity Avenue back in January, February, March of '72,  
4 did Hattie Ware ever give you any money?

5 A No.

6 Q Mr. Provitera, do you know a man by the name  
7 of Harry the Horse?

8 A Harry a Horse? I know Harry, my brother-  
9 in-law.

10 Q And his nickname is Horse, right?

11 A No.

12 Q That is not his nickname?

13 A No. I never heard him called that.

14 Q I just said Harry the Horse and you referred  
15 to your brother-in-law.

16 A You asked me if I knew anyone by the name of  
17 Harry the Horse.

18 Q Is your brother-in-law known by the name Harry  
19 the Horse?

20 A Not to my knowledge.

21 Q Not to my knowledge.

22 Q But you heard the name Horse before, right?

23 A During the course of my life I've heard the  
24 word "horse," yes.

25 Q Heard it in connection with your brother-in-



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Provitera-cross

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2 law, haven't you?

3 A No.

4 Q Never heard that?

5 A No.

6 Q That's the truth?

7 A Yes.

8 Q Yesterday you were talking about how well you  
9 could smell a mackerel, right, if it was in a package  
10 you would have been able to smell it, right?

11 A Yes.

12 Q You know how to smell money pretty good too,  
13 don't you? don't you? don't you?

14 A Money doesn't smell.

15 Q It does not? But you know about money, don't  
16 you?

17 A Yes, I do.

18 Q And that's not very funny, is it?

19 MR. ENGEL: That is argumentative, your  
20 Honor.

21 A I don't understand it.

22 THE COURT: It is argumentative.

23 Q Well, it was your need for money that caused  
24 you to join your brother in his enterprise, wasn't it?

25 A Yes.

Q By the way, did your brother say, "Come on into the business with me," or did you say, "I'd like to go into business with you"?

A My brother?

Q Yes. Your brother-in-law.

A My brother-in-law said would I like to go in with him.

Q Right. And you had been observing your brother during 1971, right?

MR. ENGEL: It is the brother-in-law.

THE COURT: Brother-in-law, I believe it is.

Q Brother-in-law.

A Yes.

Q That is Harry Pannirello, right?

A Yes.

Q And saw the kind of car he was driving, right?

A Yes.

Q And you saw the kind of money he had?

A Yes.

Q And you wanted to become part of that, right?

A Yes.

Q You wanted to make some money for yourself, right?



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A Yes.

3

Q And you didn't hesitate about that, did you?

4

A No, I didn't.

5

Q In fact, before you asked to join him you

6

didn't even know what he was doing, right?

7

A I didn't ask to join him.

8

Q Oh, he asked you to join him?

9

A Yes.

10

Q But before you decided that you were going to

11

join him, you had observed him during 1971, right?

12

A Right.

13

Q And you didn't know what he was doing during

14

1971, right? 1971. right?

15

A Right.

16

Q But you wanted a piece of the action, right?

17

A Right.

18

Q And the way you are answering today, straight-

19

forward, you went straightforward into the narcotic

20

business, right?

21

A Right.

22

Q No hesitation, right?

23

A Right.

24

Q You weren't worried about who you were going

25

to hurt, right?

1

2

A Right.

3

4

Q And while you were dealing in narcotics in 1972 did you have any remorse?

5

A No.

6

7

Q No remorse, right? You would have done anything, right?

8

A I wouldn't say anything.

9

Q Well, almost anything, right?

10

11

A I couldn't answer that. If you give me a specific --

12

Q You were a delivery boy, right?

13

A Yes.

A

Yes.

A

14

15

16

Q And if it meant you had to do a little bit more to make a little more money, you would have done more, right?

17

18

A I can't say yes to that. I don't know what more you are talking about.

19

20

21

Q Well, if they decided to make you a partner, would you say, "Don't make me a partner, Harry, I don't want the money"?

22

A No, I wouldn't.

23

Q You would say, "I want more money," right?

24

A Probably, yes.

25

Q I want to sell more drugs, right?



1 gta6  
2 A Right.

3 Q You weren't going to sell mackerels, were you?

4 A No, sir.

5 Q By the way, you are wearing a shirt and tie today.  
6 Were you wearing a shirt and tie while you were selling  
7 drugs?

8 A No, sir.

9 Q What did you think about yourself back in 1972?  
10 Did you think you were the lowest of the low?

11 MR. ENGEL: Objection.

12 THE COURT: Yes. I will sustain it.

13 Q You weren't working toward the Nobel Peace  
14 Prize, were you?

15 MR. ENGEL: Objection.

16 THE COURT: ---Sustained.

17 Q You took a trip to Canada in August, right?

18 A Yes.

19 Q That came from the narcotic business, right?

20 A Partly.

21 Q I noticed a little hesitation there. You  
22 are not sure?

23 A Well, I also worked every day. I had money  
24 coming in from that.

25 Q But you had a little supplementary income,

1  
2 right?

3 A Yes.

4 Q That helped you get to Canada, right?

5 A Yes.

6 Q By the way, you and I haven't gone over these  
7 questions before, have we?

8 A No.

9 Q The questions I am asking you now?

10 A No.

11 Q Not like you went over with Mr. Engel, right?

12 A No.

13 Q Let me talk to 1973. Let me talk to 1973.

14 Do you remember August 10, 1973 -- pardon me;  
15 January 10, 1973?

16 A I don't remember specifically the date, but --

17 Q Maybe I can refresh you.

18 A If you tell me what happened --

19 Q Do you remember the Landmark Hotel?

20 A Yes.

21 Q Ridgely, New Jersey?

22 A Yes.

23 Q Do you remember a fellow named Al?

24 A Yes.

25 Q Undercover agent?



1 A Yes.

2 Q You delivered a quarter of a kilogram of  
3 heroin, didn't you?

4 A Yes.

5 Q And that was under your instructions from  
6 your brother Harry, right -- from your brother-in-law  
7 Harry?

8 A Yes.

9 Q And you got the narcotics from a fellow  
10 named John Pannirello, right?

11 A Yes.

12 Q By the way, do you see Harry Pannirello on  
13 trial in this courtroom?

14 A Do I see --

15 Q Look around. -- Tell me if you see him.

16 A No, I don't.

17 Q Do you see John Pannirello on trial?

18 A No.

19 Q Do you see Pat Dilacio on trial.

20 A No.

21 Q This was your group, right?

22 A My group?

23 Q Yes. You were working with this group,  
24 right?  
25

A Yes.

Q Now let me take you to January 19, 1973. We are back at the Landmark Motel back in Ridgefield, New Jersey.

Do you remember that date?

A What was the date again?

Q January 19, 1973.

A Yes, sort of.

Q Well, you testified about things back in '73, right?

A Yes, but I didn't remember specific days

Q When you say sort of, I mean, it's pretty clear in your mind what you did on that day, isn't it?

A I know the events that took place in January, yes.

Q I didn't ask you about the events, I am asking you what you did.

A On that specific date I told you I don't recollect that specific date.

Q Well, do you remember meeting Al again?

A Yes.

Q And do you remember it being out in Ridgefield, New Jersey?

A Yes.



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Provitera-cross

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Q And this time you went up a little further,  
right? You delivered one pound of heroin to him, right?

A I don't know what the weight was.

Q You don't know what the weight was?

A No, I don't.

Q Didn't you say to him on January 19, 1973 that  
"We are going to make some more deliveries to you, we are  
going to start rolling Saturday night"?

A No, I never said that.

Q You never said that? If I told you that  
Agent Al, whose real name is Logan, said you said that,  
would you call him a liar? Would you call him a liar? Would you

MR. ENGEL: Objection. MR. ENGEL: Objection.

MR. PANZER: Can I finish the question?

MR. ENGEL: I believe you did.

THE COURT: It is sustained anyway.

Q I am now going to show you what has been  
previously marked as Government's Exhibit 3559, provided  
to me by the government, as they are required by law to  
do, and I am going to ask you to read paragraph 4 and see  
if it refreshes your recollection.

Read it to yourself.

(Pause.)

Q Does it say in there that you told the agent

1 gta

Provitera-cross

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2 that you were going to start rolling on Saturday night?

3 MR. ENGEL: That is objected to, your Honor.

4 THE COURT: Yes.

5 Q Does that refresh your recollection as to what  
6 you told the agent?

7 A No, it doesn't refresh --

8 Q It doesn't refresh your recollection?

9 A No.

10 Q Can you read?

11 A Yes, I can read.

12 Q I see. All right.

13 In fact, on that night your brother-in-law  
14 Harry Pannirello gave you a price list to give to the agent,  
15 didn't he?

16 A I don't remember that, no.

17 Q Do you want to look at 3559 again?

18 MR. ENGEL: Objection, your Honor. He  
19 can refresh his recollection if he wants to.

20 THE COURT: All right. Let him look  
21 at it.

22 MR. PANZER: I just want to check in my -  
23 notes that I have the right exhibit, your Honor, if I  
24 could have a moment.

25 Q I am referring you to the same document that



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Provitera-cross

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2 I referred to before, sir. Would you read paragraph 3,  
3 sir, and read it to yourself.

4 (Pause.)

5 Q Have you done that, sir?

6 A Yes.

7 Q Before you answer my question would you tell  
8 me what day it indicates that this report was prepared on  
9 the top left-hand corner?

10 MR. ENGEL: Objection, your Honor.

11 THE COURT: No, I will permit it.

12 Go ahead.

13 Q What date was that report prepared? It is  
14 indicated --

15 A Is this the date?

16 Q That is the date.

17 A It says January 23, 1973.

18 Q More than a year ago, right?

19 A Yes.

20 Q Does it say in there that you gave him a price  
21 list?

22 THE COURT: No, no.

23 MR. ENGEL: Objection.

24 Q Does that refresh your recollection?

25 Q No, it does not.

Q It doesn't refresh your recollection?

A No.

Q In the top right-hand corner does it say who prepared that report?

MR. ENGEL: Objection, your Honor.

This type of question is improper.

THE COURT: Yes, but I will permit it any way.

Q Who prepared that report?

A Where does it say that?

Q On the top right-hand corner.

A Albert Logan. Albert Logan.

Q Do you know who Albert Logan is?

A Yes.

Q Who is the fellow Al, right?

A Yes.

Q The guy you didn't know was an undercover agent, right?

A Right.

Q The guy you delivered a pound of heroin to on January 19, 1973, right?

A Yes.

Q Do you remember February 2, 1973?

A Yes.



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Provitera-cross

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Q We are back out at the Landmark Motel in New Jersey, right?

A Right -- no, wrong.

Q No? You weren't out in Route 46?

A Yes.

Q Ridgefield?

A Yes.

Q Pardon me. Was it the Howard Johnson's --

A Yes, the Howard Johnson's.

Q And old Al was out there on that day too, right?

A Yes, he was.

Q And you were out there armed too, weren't you?

A Armed? Armed?

Q Well, you had -- you were ready to do business, right?

A Yes.

Q You had a brown paper package?

A Yes.

Q In the brown paper package you had half a kilo of heroin?

A I don't recall the weight.

Q Well, do you want to look at Mr. Logan's report again or will you take my word that it was half a pound?

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Provitera-cross

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2 MR. ENGEL: Objection.

3 THE COURT: Yes. Go ahead. What did  
4 you want to say, Mr. Engel?

5 MR. ENGEL: I object to this questioning.  
6 If he wants to ask him a question and then see if he can  
7 refresh his recollection, that is proper. Otherwise  
8 it is improper.

9 THE COURT: All right. He said he didn't  
10 know what the weight was, Mr. Panzer.

11 Q When you were dealing in '72, right --

12 THE COURT: Yes.

13 Q You were dealing in quarter kilos?

14 A I explained I didn't know the weight, it was  
15 just a package.

16 Q You carried a package, didn't you?

17 A Yes.

18 Q There was no mackerel in the package, right?

19 A Right.

20 Q It had a certain weight to it, right?

21 A Yes.

22 Q You know what a pound feels like, don't you?

23 A In comparison to 50 pounds, yes.

24 Q All right. You know what a half a pound  
25 feels like, right?



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Provitera-cross

3129

2 A Roughly, yes.

3 Q All right. So roughly did you have a half  
4 a pound of heroin -- I mean a half a kilo of heroin on you  
5 on February 3, 1973?

6 A Yes.

7 Q Let me ask you this question:

8 Did the agent get into your car or did you  
9 get into this car on February 3, 1973?

10 A Neither.

11 Q Neither of you got into either one's car? Are  
12 you sure about that?

13 A Yes.

A Yes.

14 Q Well, did the agent walk toward your car?

15 A Yes.

16 Q And when he walked toward your car did you say  
17 to him, "I got my package, where is your package with the  
18 \$21,000"?

19 A I didn't say, "Where is your package with the  
20 \$21,000?" no.

21 Q Did you say, "I got my package"?

22 A Yes.

23 Q Did you say, "I'm ready to give it to you"?

24 A Yes.

25 Q Did you ask him for a brown paper package?

1 gta

Provitera-cross

3130

2 A I said, "I have my package, do you have yours"?

3 Q You knew what was going to be in that brown  
4 paper package, didn't you?

5 A Money.

6 Q Supposed to be?

7 A Yes.

8 Q You were supposed to get part of that money?

9 A Part of that money?

10 Q Yes. I notice your brother cheated you,  
11 but I want to know, weren't you supposed to get something  
12 for delivering it?

13 MR. ENGEL: Objection, your Honor, it is his  
14 brother-in-law and it is improper. - law and it is improper -

15 MR. PANZER: I get confused sometimes. I  
16 mean brother-in-law.

17 MR. ENGEL: I object. It is argumen-  
18 tive.

19 THE COURT: Yes.

20 BY MR. PANZER:

21 Q You were interested in that brown paper bag  
22 that the agent was supposed to have, weren't you?

23 A Yes, I was interested in picking it up,  
24 yes.

25 Q Well, you had a personal interest in it,



1 gta

Provitera-cross

3131

2 didn't you?

3 A Personal interest?

4 Q Yes.

5 A What do you mean?

6 Q You were supposed to get some of that money,  
7 weren't you?

8 A Yes, yes.

9 Q Mr. Provitera, I want to go down your score-  
10 card for deliveries and just be a little patient with  
11 me.

12 I believe you testified yesterday that in  
13 January or February you made one delivery to Basil in the  
14 apartment, right? Do you recall that?

15 A Yes, yes.

16 Q And then for your second and third deliveries  
17 you met Basil in the Bronx somewhere in the street and  
18 you delivered again, right?

19 A Yes.

20 Q And then you made another delivery to Al  
21 Greene, right?

22 A Yes.

23 Q That was around January, February, March of  
24 1972?

25 A Yes.

1 gta

Provitera-cross

3132

2 Q That was around January, February of March of  
3 1972?

4 A Yes.

5 Q You recall that?

6 A Yes.

7 Q Then you made a delivery to Tennessee in May  
8 of 1972, right, yes?

9 Q That was at Route 46, right?

10 A Right.

11 Q You weren't delivering mackerels, you were  
12 delivering heroin, right?

13 A Yes.

A Yes.

14 Q Then you made a delivery at the "Jungle" or, as  
15 you said, Jingle Bar, right? You took the stuff out of  
16 the toolbox?

17 A Yes.

18 Q Then you made a delivery at a factory on Grand  
19 Avenue, right?

20 A Yes.

21 Q That was heroin again, right?

22 A Yes.

23 Q Then you made another delivery at the Dairy  
24 Queen, right?

25 A Yes.



1 gta

Provitera-cross

3133

2 Q And then you made a delivery at the Landmark  
3 Motel some time in June of 1972?

4 A Yes.

5 Q That was when Harry was on vacation?

6 A Yes.

7 Q Do you remember when he was on vacation he  
8 went to Florida?

9 A Yes. That wasn't the Landmark, that was Howard  
10 Johnson's.

11 Q Well, the Landmark is very close to the Howard  
12 Johnson's, isn't it?

13 A Yes.

14 Q You will forgive me if I, you know, miss a  
15 few.

16 You made a delivery again in '72 at the  
17 Howard Johnson, right?

18 A Yes.

19 Q And then in the fall of '72 you made another  
20 delivery, right?

21 A Yes.

22 Q At the motel, right?

23 MR. ENGEL: Which motel, your Honor?

24 MR. PANZER: Howard Johnson Motel.

25 Q Right?

1 gta

Provitera-cross

3134

2 A Yes.

3 Q All in '72. That's what you said yesterday,  
4 right?

5 A Yes.

6 Q And then in October, November you made another  
7 delivery at the same place, right?

8 A Yes.

9 Q That is 11 deliveries, right?

10 A Yes.

11 Q Are there any indictments pending against you  
12 for these 11 deliveries?

13 A For the 11 deliveries? For the 11 deliveries?

14 Q Yes. Yes.

15 A Just for the time with the agent.

16 Q Well, would you answer my first question?  
17 We will get to the agent later.

18 You just admitted that you made 11 deliveries  
19 of heroin, right?

20 A Yes.

21 Q Are there any indictments pending anywhere in  
22 the world against you for those 11 deliveries?

23 A No.

24 Q And these deliveries were committed in 1972,  
25 right?



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Provitera-cross

3135

2 A Yes.

3 Q And it is now 1974, right?

4 A Yes.

5 Q And you don't expect any indictments to be  
6 lodged anywhere in the world for those 11 deliveries, do  
7 you?

8 A No, I don't.

9 Q And you thought of that before you decided  
10 that you were going to be a cooperating individual with  
11 the government, right? That entered your mind, right

12 A Yes.

13 Q You know from your plea in New Jersey that you  
14 you pleaded to two counts in New Jersey, right?

15 A Yes.

16 Q And you told us that was possession with  
17 intent to sell, right?

18 A Yes.

19 Q Two counts --

20 MR. ENGEL: Your Honor, I object. That  
21 was not his testimony. He said it was possession with  
22 intent, he did not say possession with intent to do  
23 anything.

24 MR. PANZER: Well, I will ask him.

25 Q Did you plead guilty for possession with intent

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1 gta

Provitera-cross

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2 to sell drugs or did you plead guilty simply to posses-  
3 sion of drugs?

4 A I honestly don't know. I pleaded to two  
5 counts on the indictment.

6 Q You read the indictment before you pled, didn't  
7 you?

8 A Yes.

9 Q And you read that indictment when?

10 A When it was given to me.

11 Q What date was that?

12 A Some time February, '73.

13 Q Yes. But you didn't plead guilty until around  
14 June of '73, right? June of '73, right? June of '73,

15 A Right.

16 Q You read it again in June, right?

17 A No, I didn't.

18 Q Wasn't the charge read to you in open court?

19 A Yes.

20 Q Wasn't that done on June, '73?

21 A Yes.

22 Q And you are telling this jury you don't  
23 remember what charge was read to you in June of '73?

24 A I don't remember how the charge was worded, no.

25 Q At any rate, you did not plead guilty, according



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Provitera-cross

3137

2 to your words, to selling any drugs to an agent, right?

3 Why are you hesitating? You didn't hesitate  
4 when Mr. Engel asked you questions.

5 MR. ENGEL: Objection, your Honor. That  
6 is argumentative.

7 THE COURT: Yes, that is argumentative.  
8 Let us not get into that.

9 Q I can't hear you.

10 THE COURT: You can hear me, can't you?

11 MR. PANZER: I am sorry, Judge.

12 A Would you repeat the question, please.

13 MR. PANZER: Would you read the question  
14 back to him, please.

15 (Record read.)

16 A I pleaded guilty to two of the four charges.

17 Q But you can't tell us exactly what those charges  
18 are, right?

19 A I know one was conspiracy and the other was  
20 possession and something with intent written in it.

21 Q But you can't remember that it said that you  
22 sold to an agent, right? Yes or no.

23 A In the indictment it said -- yeah, that I sold  
24 drugs to the agent.

25 Q But you didn't tell this jury that yesterday,

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Provitera-cross

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did you?

MR. ENGEL: Objection.

A The jury didn't ask me.

Q Mr. Engel asked you, right? Didn't Mr.

Engel ask you?

A What did he --

Q Did he ask you what you pled guilty to?

A He -- yes.

Q And did you say possession?

A Yes.

Q You didn't say sale, right?

A No. I don't recall if I did.

Q You don't recall what you said yesterday?

A No. You are confusing me.

Q How come Mr. Engel didn't confuse you?

MR. ENGEL: Objection, your Honor.

THE COURT: Sustained.

Q You know what sentence you are facing out in  
Newark, right?

A Yes.

Q Fifteen years on each count, right?

A Yes.

Q Okay. So let's go back to the 11 deals  
you did before 1973. Do you know how many 11 times 15



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Provitera-cross

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MR. ENGEL: Objection, your Honor.

THE COURT: Mathematics are not our strong point.

MR. PANZER: Maybe I can --

THE COURT: I will sustain it. It doesn't matter.

Q You pleaded guilty in June, 1973, right?

A Yes.

Q It is now February, if I'm right -- I hope I'm right -- February 20, 1974, right -- February 21st?

A Yes.

Q You haven't been sentenced yet, right?

A Right. A Right.

Q Your sentence is being kept open, right?

A Yes.

Q Till this trial is over, right?

A Yes.

Q By the way, you are not going to be sentenced by Judge Duffy, are you?

A I don't know who will be my sentencing judge.

Q Well, it is not the judge that is sitting on this trial, is it?

A No, not that I know of.

Q And your sentence date is being kept open until

this trial is over, right?

A Right.

Q And before your sentence you expect the government to say a few nice words about you, right?

A Yes.

Q That is your expectation?

A Yes.

Q How much time have you spent in jail up until now?

A Up to now?

Q Yes, up to now.

A About five days, five, six days.

Q Didn't you say three days yesterday?

A I said three days before the arraignment.

Q Now you are up to five days?

MR. ENGEL: Objection, your Honor.

That characterizing the testimony in a misleading fashion.

THE COURT: I am afraid it does. I will sustain the objection.

Q So you have done five days, right, and you don't expect to be prosecuted for the other 11 transactions, right?

A Right.

Q So that takes 165 years right off, right?



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Provitera-cross

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MR. ENGEL: Objection, your Honor. This is argumentative.

THE COURT: Sustained.

Q Getting back to smelling that mackerel you were telling us about yesterday, you have been smelling a lot of fresh air, right?

MR. ENGEL: Objection, your Honor. This is argumentative again.

THE COURT: Yes, it is.

Q You expect to smell a lot more, right?

MR. ENGEL: Objection.

THE COURT: Sustained. COURT: Sustained.

MR. PANZER: I have no further questions.

(Pause.)

THE COURT: All right, ladies and gentlemen, we are going to take an early morning break right now.

(The jury left the courtroom.)

THE COURT: All right, Mr. Provitera, you can go back to the witness room, please.

(The witness left the courtroom.)

THE COURT: Mr. Phillips, you requested permission to take out of turn a short witness. How

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long do you figure short is?

MR. PHILLIPS: I would say three to four minutes on direct, your Honor. I don't even know if there will be any cross examination.

THE COURT: All right. Mr. Rosenbaum, this affects your client, I gather.

MR. ROSENBAUM: I presume so.

THE COURT: I don't know anything about it, but we will take that immediately after the break. All right?

MR. ROSENBAUM: Thank you, your Honor.

THE COURT: All right, gentlemen, take 10. 10.

(Recess.)



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(Jury present.)

THE COURT: Ladies and gentlemen, we are going to do something a little bit unusual. We are going to break the cross-examination of Mr. Provitera to have a short witness which the government wants to call this morning.

Mr. Phillips, who is it that you want to call?

MR. PHILLIPS: Mr. Finn, your Honor.

A L B E R T J. F I N N, called as a witness on behalf of the government, being first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. PHILLIPS:

BY MR. PHILLIPS:

BY MR. PHILLIPS:

Q Mr. Finn, what is your occupation?

A I am a real estate broker.

Q Are you familiar with the building located at 424 West 57th Street?

A I am.

Q Do you have any connection with that building?

A Well, I am the agent-operator of the building.

Q Where is the building in relation to the Holiday Inn?

A It's directly adjoining the Holiday Inn, just east of the Holiday Inn.

Q Did there come a time in 1972 or 1973 that a

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Finn-direct

man by the name of Ralph Rizzo lived in that building?

A Yes.

MR. ROSENBAUM: Objection, your Honor.

THE COURT: No, I will permit it.

Q Do you recall what period of time he lived there?

A To the best of my recollection, it was some time in December.

Q Of 1972?

A Of 1972.

Q That he started living there?

A That's correct.

Q Do you know how long he lived there?

A Well, from that period of time until some time in August of 1973.

Q Which apartment did he live in, if you recall?

A It's Apartment 2-A on the second floor.

Q Prior to Mr. Rizzo living there do you recall who lived in that apartment?

A Yes, I do.

Q What was that person's name?

MR. ROSENBAUM: Objection, your Honor, irrelevant.

THE COURT: No, I will permit it.

Q What was that person's name?

A Thomas Petito.



1 hp3 Finn-direct

2 Q While Mr. Rizzo was living there whose name  
3 appeared on the mailbox for Apartment 2-A?

4 A Mr. Rizzo.

5 Q Incidentally, how many apartments are there in  
6 that building?

7 A 20 apartments.

8 Q Mr. Finn, would you come down here a minute and  
9 tell us if you see Mr. Rizzo in the courtroom anywhere by  
10 looking at the gentlemen starting with me and going all the  
11 way around that part to the door over there, if you would.

12 A Seated at the table here?

13 Q Seated either at the table or either at the table

14 MR. ROSENBAUM: Objection, your Honor. That is  
15 leading the witness.

16 THE COURT: I don't think so.

17 Q Seated either at the table or behind the table  
18 here and against the wall.

19 A I think that is Mr. Rizzo over in the corner with  
20 the brown suit.

21 Q In the brown suit?

22 A Yes.

23 Q Sitting against the wall?

24 A That's right.

25 Q All right. You may return to the witness stand,

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Finn-direct

if you would.

MR. PHILLIPS: May the record reflect that the witness has identified the defendant D'Amico.

Your Honor, I have no further questions.

MR. ROSENBAUM: Can we have a side bar conference?

THE COURT: Yes.

(At the side bar.)

MR. ROSENBAUM: Your Honor, in view of the fact that this comes to me as a surprise -- I was in another courtroom before I came here -- somebody from my office is on the way here with certain information. He will be here in five minutes, Judge, maybe not even five minutes. There is some documentation I have in my files that I must have to cross-examine this witness.

If I could only have maybe a five-minute recess, Judge, not even that, the woman should be here. My office is across the street, 51 Chambers. I think it's almost momentarily that she will be here.

THE COURT: Under the circumstances, why not. If it's going to be five minutes, fine. If it's going to be a long time --

MR. ROSENBAUM: No. Mr. Sunden went out as soon as he heard Mr. Finn's name and he called my office to have the secretary bring the papers over.



1 hp5

Finn-direct

2 MR. PHILLIPS: It seems to me rather than excuse  
3 the jury, if it's only going to be a matter of minutes,  
4 perhaps we could just wait here, save some time.

5 MR. ROSENBAUM: I have no objection to that.

6 THE COURT: All right.

7 MR. ROSENBAUM: Maybe we are better off excusing  
8 them. They may get a little angry with me.

9 THE COURT: Yes.

10 MR. ROSENBAUM: She should be here in two minutes.

11 THE COURT: All right.

12 (In open court.)

13 THE COURT: Ladies and gentlemen, I am going to  
14 ask you to step out just for a moment or two.

15 (Jury left the courtroom.)

16 MR. SUNDEN: I wonder if I might clear up an  
17 unrelated matter since the jury is not present.

18 THE COURT: You want Mr. Finn to step out?

19 MR. SUNDEN: I don't think that would make any  
20 difference.

21 THE COURT: Why not. Mr. Clerk, why don't you  
22 take the witness out.

23 (Witness left the courtroom.)

24 MR. SUNDEN: I received this morning a copy of  
25 yesterday's transcript. Directing your Honor's attention

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Finn-cross

to page 2972, line 3, wherein Mr. Provitera was asked if he saw Butch Ware in the courtroom today, the transcript is transcribed as follows:

"A Yes. He is sitting next to Harry."

My recollection is that the witness testified  
"Yes. He is sitting next to Hattie."

I brought this to the attention of the government. As I understand it, they are going to stipulate the accurate rendering of the witness's testimony is "Yes. He is sitting next to Hattie."

If that stipulation is forthcoming I would ask that your Honor order that ~~that be corrected~~.

MR. CURRAN: That's correct, your Honor. 's correct.

(Pause.)

(Witness resumes witness stand.)

(Jury present.)

THE COURT: I told you it would only be a few moments.

CROSS EXAMINATION

BY MR. ROSENBAUM:

Q Mr. Finn, my name is Mr. Rosenbaum. I am the attorney for Mr. D'Amico, who you identified as Mr. Rizzo.

You testified that somewhere in December, 1972, the name Rizzo appeared on the mailbox, is that correct?



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Finn-cross

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A That's correct.

Q Did you place the name Rizzo on the mailbox?

A I did.

Q Personally?

A I did.

Q In December of '72, sir?

A To the best of my recollection, yes.

Q Is there also a bell, a place where you ring bells to get into the apartment?

A There is.

Q Are there places for name tags at the bell?

A There is. A There is. A A

Q That would be the outer lobby to gain entrance to the building?

A That's correct.

Q Did you place the name tag on the bell also?

A I did.

Q Would that have been the same time as the time that you placed the name tag on the mailbox?

A Yes.

Q And that would be, to the best of your recollection, December, 1972, is that correct?

A That's correct.

Q Did Mr. Rizzo have a lease for that apartment?

1 hp8 Finn-cross

2 A Again, to the best of my recollection, since I  
3 don't have the lease signed by Mr. Rizzo, nor do I have the  
4 copy, as I have done in the past --

5 Q Please answer my question. Do you have a lease  
6 for Mr. Rizzo? Yes or no, please.

7 A No, I do not.

8 Q Did you ever sign a lease for Mr. Rizzo?

9 A To the best of my recollection, I did.

10 Q Do you have a copy of that lease?

11 A I do not.

12 Q You are the broker for the building, is that  
13 correct?

14 A I am.

15 Q Would it be generally done in your business that  
16 you would give a blank lease to a prospective tenant, they  
17 would sign it and then you would execute it?

18 A Well, I started to explain that I had prepared  
19 the two leases, I signed them, and I left the two of them.  
20 That is to the best of my recollection, because I cannot  
21 find the lease, I am only trying to reconstruct what happen-  
22 ed.

23 Q Then how did you establish the date of December,  
24 1972, Mr. Finn?

25 A From a notation that I made on the lease of the



1 hp9

Finn-cross

2 prior tenant wherein he agreed to transfer his security to  
3 Mr. Rizzo.

4 Q Do you have that paper with you?

5 A I gave it to the attorney.

6 Q Would you have placed the name Rizzo on the  
7 doorbell before he executed a lease or before you executed  
8 his lease?

9 A I don't believe I would.

10 Q I show you this paper and ask you whether or not  
11 this is your signature, Mr. Finn, on the bottom of it.

12 A That is.

13 Q Examining that paper, could you now tell us when  
14 the lease would have started to run?

15 A Would you repeat that?

16 Q Examining the paper in your hand, could you  
17 please now tell the Judge and jury when Mr. Rizzo's lease  
18 would have started to run, when his occupancy would have  
19 commenced?

20 A It would start from February 1, 1973.

21 Q Would you have placed the name Rizzo in the  
22 doorbell after commencement of that lease, and in the mail-  
23 box?

24 A Ordinarily I wouldn't.

25 Q Did you place the name Rizzo in the doorbell

1 hp10

Finn-cross

2 after that lease started?

3 A I don't recall that I placed it after.

4 Q Would you recall if you placed it at the same  
5 time that that lease was executed?

6 A It may very well have been.

7 Q And that would have been on or about February 1,  
8 1973, is that correct?

9 A That's correct.

10 Q Would I be correct in assuming, therefore, that  
11 prior to February 1, 1973, Mr. Rizzo's name did not appear  
12 either on the doorbell or in the mailbox?

13 A It could very well be. It could very well be.

14 Q You would not have done it unless you had prepared  
15 the lease prior to February 1, is that correct?

16 A I wouldn't do it. no, I wouldn't put --

17 Q Mr. Finn, you are the person, you just testified  
18 that you personally placed the name Rizzo both in the mail-  
19 box slot where the name appears and in the bell slot.

20 A Correct.

21 Q And now you are testifying that you would not  
22 have done it before the commencement of the term of that  
23 lease, is that correct?

24 A Ordinarily I would not do that.

25 Q Am I correct in assuming that ordinarily you



1 hp11

Finn-cross

2 would not have done it in this case also?

3 A Ordinarily I would not have done it.

4 Q Is it your testimony, Mr. Finn, that you did not  
5 do it prior to February 1, 1973, in the Rizzo matter?

6 A I cannot testify to that.

7 Q You would not have known his name before February  
8 1, 1973, would you?

9 A Yes, I would.

10 Q A day before February 1, two days before?

11 A More than that, sir.

12 Q But until you received copies of that lease you  
13 would not have advised the U.S. Mail Department to deliver  
14 mail to the name of Rizzo unless he actually lived there,  
15 is that correct?

16 A I would never advise the mailman to do anything,  
17 sir.

18 Q You would not have put the name Rizzo in the mail-  
19 box then?

20 A That I may -- that may be true. But I never  
21 advise the mailman.

Q Who do you get these name tags from for the place name Rizzo and things of that nature.

A I make them myself. I have a Dyno machine.

Q And would you have any recollection as to when you prepared the name Rizzo to put on the doorbell?

A This is not clear in my mind.

Q But ordinarily it would have been on or about February 1, 1973, is that correct?

A On or about February 1st, yes.

MR. ROSENBAUM: No further questions.

Your Honor, I am sorry. I would like to offer this.

THE COURT: We have to mark the piece of paper that you are referring to as an exhibit.

MR. ROSENBAUM: And I would like to offer it in evidence, your Honor, at this time.

THE COURT: Let us get it marked first.

MR. PHILLIPS: We have no objection, your Honor.

THE COURT: All right.

MR. ROSENBAUM: No further questions.

THE COURT: It will be received in evidence.

(Defendant D'Amico's Exhibit A was received in evidence.)



THE COURT: Mr. Phillips?

MR. PHILLIPS: Your Honor, may I have this marked as a government's exhibit.

THE COURT: Yes.

(Government's Exhibit 80 was received in evidence.)

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q The lease that was shown you, Mr. Finn, was a lease from February 1, 1973 to January 31, 1975, is that correct?

A That's correct. That's correct

MR. ROSENBAUM: I object to that. The document speaks for itself at this point.

THE COURT: All right.

MR. PHILLIPS: It is in evidence, your Honor.

THE COURT: You can refer to it. Go ahead.

Q When did Mr. Rizzo stop living at this address?

MR. ROSENBAUM: Objection, your Honor.

THE COURT: No, I will permit it.

Q Would you answer the question.

A I believe it was some time in August of

1973.

Q Did he attempt to sublease the apartment?

MR. ROSENBAUM: Objection, your Honor.

This is totally irrelevant and it is improper redirect.

THE COURT: No, I will still permit it.

Q Did he attempt to sublease the apartment?

A No, he did not.

Q Did he just move out?

A Well, he notified me and then he vacated?

Q You mentioned a document that you had seen and turned over to the government with respect to how you could remember that it was in December of 1972.

I show you what has been marked as Government's Exhibit 80 for identification. Is this the document that you were referring to on cross examination?

MR. ROSENBAUM: Objection, your Honor.

THE COURT: No.

MR. ROSENBAUM: May I have a side-bar conference at this point?

THE COURT: Yes.

(At the side bar.)

MR. ROSENBAUM: Your Honor, I have received absolutely no 3500 material in this material at all.

I had no idea until this was brought out on cross, as to



any of the pieces of paper in existence and I have to plead surprise at this point. I think I am put at a fantastic disadvantage. At least I should have been served with a copy or some 3500 material if this matter was going to be put in at this point. In view of that I respectfully object to any questions with reference to that document.

THE COURT: I will permit it.

(In open court.)

BY MR. PHILLIPS:

Q Mr. Finn, is that Government's Exhibit 80 for identification in front of you the document you were referring to on cross examination?

A It is.

Q And what is the date of that document?

A It is dated January 25, 1973.

Q Prior to the execution of this lease that commenced on February 1, 1973, was Mr. Rizzo occupying the apartment in question?

A He was.

Q Do you know how much prior to that?

A I would say two or three weeks; maybe a month.

MR. PHILLIPS: I have nothing further, your Honor.

## RE CROSS EXAMINATION

BY MR. ROSENBAUM:

Q Mr. Finn, this paper, which is marked Government's Exhibit 80, I believe, for identification, was this mailed to you or did you receive it in hand?

A I don't quite get your question.

Q This piece of paper which you identified, was this handed to you by the previous tenant or was this mailed to you?

A No. He came to my apartment and I drew it up.

Q On January 25, 1973?      On January 25, 1973?

A That is correct.      That is correct.

Q You remember distinctly?

A That's correct.

Q And in that apartment the prior tenant, who was Mr. Petito living with, his wife?

A I don't know the relationship, sir.

Q There was a lady there?

A Not in the beginning, but subsequently.

Q When you say subsequently, was there a lady living there during the month of January, 1973?

A There was a lady living in the apartment.

Q And did that lady move out when Mr. Petito moved



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out?

A Yes.

Q Would I be correct in assuming that it was either Mr. Petito's girlfriend or wife?

A I would say so.

Q Okay.

Is that a one-bedroom apartment or a two-bedroom apartment?

A One-bedroom apartment.

Q And would you ever go into that apartment and actually see the lady living there in January, 1973?

A No, I can't say I did. I can't say I did.

Q Did you go in there at any time during the month of January, 1973 and see this lady living there?

A No.

Q Did you go in that apartment at any time during the month of December, 1972 and see this lady living there?

A You are rererring to the lady associated with Petito?

Q That's correct.

A No.

Q Did you go there during the month of November, 1972 and see the lady who was associated with Mr. Petito living there?





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A I can't pinpoint it.

Q But you knew there was a lady living there with Mr. Petito, is that correct?

A That's correct.

Q Did you ever at any time see her in the apartment with Mr. Petito? \_\_\_\_\_

A During the period of his occupancy. I can't pinpoint, but I'm sure that there were times -- there was a time that I did see her?

Q In the apartment?

A In the apartment.

Q Could you describe what the inside of that apartment looked like? apartment looked like? apartment

A Yes.

Q Would that be during October, possibly, of 1972 that you saw this lady in the apartment?

MR. ROSENBAUM: I will withdraw that question.

Q How many times did you see that lady in the apartment with Mr. Petito while Mr. Petito was living there?

A I don't think more than twice.

Q Do you live in that building, Mr. Finn?

A No, I did not.

Q Do you have an office in that building?

2 A In the basement.

3 Q And how frequently did you go to that office  
4 in the basement?

5 A I would say about every second or third  
6 day.

7 Q And I would presume you believe that this lady  
8 with Mr. Petito lived there because you saw her go in and  
9 out of the apartment every second or third day, of the build-  
10 ing, is that correct?

11 A Well, during that period of time, as I said,  
12 I probably saw her a few times and on an occasion that I  
13 had to be in the building with the repairman to fix a  
14 faucet, a drip, that's the occasion I would --

15 Q You would see her?

16 A Yes.

17 Q But not during January of 1973? You were  
18 not in the apartment in January --

19 A No.

20 Q You were not in the apartment in December,  
21 1972?

22 A No.

23 Q Mr. Finn, at best you can say is all you saw  
24 was Mr. Rizzo going in and out of that building maybe  
25 once every third or fourth day when you were there,



1  
2 is that correct?

3 MR. PHILLIPS: Objection. I don't think  
4 he has even been asked that.

5 THE COURT: No, I will permit it.

6 Go ahead. Do you want the question read  
7 back to you, Mr. Finn?

8 THE WITNESS: I beg your pardon?

9 THE COURT: Do you want the question read back  
10 to you?

11 THE WITNESS: Yes, if you would.

12 (Record read.)

13 A I can't give you the exact time, and I didn't  
14 have occasion to see Mr. Rizzo in the apartment later.  
15 Now, I don't know what time elements you are talking about  
16 now.

17 Q I am talking now during the month of January,  
18 1973. You were never in that apartment, is that cor-  
19 rect?

20 MR. PHILLIPS: Objection. It has been asked  
21 and answered, your Honor.

22 MR. ROSENBAUM: It is leading up to my next  
23 question.

24 THE COURT: All right, I will permit it.

25 During January of 1973 were you in the apart-

ment?

THE WITNESS: I was not in the apartment.

Q So you did not see Mr. Rizzo in the apartment, is that correct?

A No, I did not.

Q During January, 1973?

A That's correct.

Q And you were not in the apartment during December, 1972, is that correct? You testified earlier.

A Right.

Q And accordingly you did not see Mr. Rizzo in that apartment in December, 1972, is that correct? 1973, I am talking about apartment 2A, is that correct? 1973, I am talking about apartment 2A, is that correct?

A I know.

It came to my attention --

Q Mr. Finn, please, I asked you -- you testified before that you were not in the apartment during December, 1972. Am I correct in assuming that you did not see Rizzo in that apartment in December, 1972?

A No, I did not see him in the apartment.

Q And is it true that you were not in the apartment in November, 1972?

A That's true.

Q And you did not see Mr. Rizzo in the apartment



1 in November of 1972?

2  
3 A No, I did not.

4 Q And you only were there in the building in  
5 performance of your job maybe every second or third day,  
6 in the basement, is that correct?

7 A That's correct.

8 Q And how long would you be in the building  
9 every second or third day, how many hours?

10 A Oh, maybe about an hour.

11 Q In the basement?

12 A Well, not staying in the basement. I would  
13 go to the roof, I would look at the elevator shafts, etc.

14 Q And what time of day would that be? Day or night?

15 A Whenever there was a need for me to go to the  
16 elevator shaft or if I had to visit other tenants in the  
17 building.

18 Q What time of day did you usually get into the  
19 building every second or third day of the week when you  
20 would go there?

21 A I didn't go there on specific days the second  
22 or third day. If I had a call from a tenant with  
23 reference to a complaint or a leak, I would go to the  
24 building and at that time I could be on the third floor  
25 or fifth floor or the basement.

Q Did you maintain a diary as to the amount of times you went to that building?

A No, I did not.

Q Could it have been less than two times a week during the month of January, 1973?

A No, not less than two times in any month.

Q In a week.

A Oh, in a week? No, no. I was there at least a couple of times every week, maybe two or three times.

Q And in totality of hours would you say three hours a week, four hours a week? four hours a week?

A I would say about four hours a week, about four hours.

Q And during those four hours a week, part of your time was spent in the basement, is that correct?

A Correct.

Q And in the basement where you maintain, I presume, your office were you able to see the front entrance?

A No, sir.

Q You spoke to someone before you took the stand today, is that correct?

A I beg your pardon?

Q You spoke to one of the U. S. attorneys before



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you took the stand today, is that correct?

A Yes, sir.

Q I presume Mr. Phillips?

A No, sir -- yes, I spoke with Mr. Phillips.

Q And you apparently told Mr. Phillips that you knew that Mr. Rizzo was living there during the month of January, 1973, is that correct?

A That's correct.

Q But that was not based upon your actually observing him in the apartment, is that correct?

A No, sir.

Q You did not physically see this man living in the apartment in December of 1972 either, is that correct?

A No, sir.

Q And you did not physically see this man living in the apartment in November of 1972, is that correct?

A No, sir, I didn't see him living in the apartment.

Q You may have seen him enter the building, is that correct?

A Yes, I have seen him enter the building.

Q And when you saw him enter the building it would at best have been only two or three times a week during

January, 1973, is that correct?

A That is correct.

Q That is if you saw him each and every time that you were in that building, is that correct?

A That's correct.

Q And is it your testimony now that you saw Mr. Rizzo enter that building each and every time that you were there in that building during January, 1973, during that one hour?

A No, I never testified to that.

Q How many times did you see Mr. Rizzo in that building yourself during the month of January, 1973, during approximately the 12 to 16 hours that you were in the building during the whole month of January, 1973?

A I really can't be positive I saw him at all in January.

Q Can you be positive that you saw him in December of '72, during the 12 to 16 hours a week that you were in the building?

A I can't be positive.

Q But you started to see him in February of '73, is that correct?

A Yes.

Q More frequently?



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2 A Well, never frequently, sir.

3 Q You went into his apartment in February, 1973?

4 A I think I was in his apartment at that time,  
5 yes.

6 MR. ROSENBAUM: I have no further questions  
7 of this witness.

8 THE COURT: All right, Mr. Finn, step down,  
9 please. You are excused.

10 (Witness excused.)

11 THE COURT: All right, Mr. Clerk, get Mr.  
12 Provitera back.

13 P A S Q U A L E P R O V I T E R A A resumed.

14 CROSS EXAMINATION

15 BY MR. POLLAK:

16 Q Mr. Provitera, between the time you left the  
17 courtroom yesterday and right now did you talk to any  
18 government agents or anyone from the U. S. Attorney's  
19 Office?

20 A Yes, I talked.

21 Q Who did you talk to?

22 A In the witness room is a government agent and  
23 I passed Mr. Engel in the hall yesterday and this  
24 morning.

25 Q Let us start with this. No other member

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Provitera-cross

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2 of the U. S. Attorney's Office except for Mr. Engel?

3 A Mr. Phillips walked into the witness room  
4 to go to the bathroom once.

5 Q Quite aside from such natural occasions,  
6 did you have any conversation about this case with Mr.  
7 Engel or Mr. Phillips?

8 A No.

9 Q How about the agent that is in the witness room,  
10 did you discuss the case between the end of court yesterday  
11 and today?

12 A Not really discussed the case. He asked me,  
13 you know, if I was nervous and how things were going  
14 there.

15 Q Mr. Engel, Mr. King and Mr. Panzer have gone  
16 into your background a little bit and I am going to do  
17 the same.

18 When did you graduate high school?

19 A 1957.

20 Q And what jobs have you held since you got out  
21 of school?

22 A Right after I got out of school I worked in a  
23 factory for a short time, then I went into the service --

24 Q That was the Navy in '58, wasn't it?

25 A Yes.



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Q And when did you get out?

A '61.

Q What jobs have you had since '61?

A Mostly calking and I think about three years  
I worked for a water company.

Q Would you say that between 1961 and 1973 you  
have been steadily employed in legitimate jobs?

A Yes.

Q --- No long periods of unemployment, right?

A Right.

Q Will you tell us when you started your  
criminal career, sir? criminal career, sir? criminal ca

A '72. '72.

Q Can we pinpoint the month?

A January.

Q And I think you continued in this criminal career  
until the federal government locked you up in February of  
'73, right?

A Right.

Q I take it since that date you have not pur-  
sued any criminal activities?

A Right.

Q Would it be fair to characterize your criminal  
activities as being sort of a delivery boy for the

narcotics operation headed by your brother-in-law Harry Pannirello?

A Yes.

Q And your functions there were to pick up and deliver packages, as you put it, right?

A Right.

Q Well, now, I think you have been asked whether those packages contained mackerels and we know that they didn't, is that right?

A Yes.

Q In fact, they contained heroin, right?

A Yes.

A Yes.

Q And you knew they contained heroin, didn't you?

A Yes.

Q Did you know it was against the law to deal in heroin?

A Yes.

Q And you knew that back in January, 1972, right?

A Yes.

Q So that when you refer to packages you are talking about heroin or some of the other words?

Have you ever heard of the word, for example, skag?



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A Skag? No.

Q Smack?

A Smack, yes.

Q What is smack, Mr. Provitera?

A Heroin.

Q I guess you have heard junk?

A Yes.

Q How about horse?

A --- Yes.---

Q What is horse.

A Heroin.

Q I believe your testimony was that you made  
a total of about 13 delivery operations in all, is that  
rifht?

A It was something like that, yes.

Q Let me refresh your memory.

You testified that the total amount of money  
that you received from all the criminal activity was  
\$2000, right?

A Yes. I said about \$2000.

Q And you said that your brother-in-law Harry shor  
changed you for the last three trips, the ones with Al Lo-  
gan, is that right?

A I didn't say that he short-changed me; I said

that I never received the money for those.

Q All right. He didn't pay you?

A Yes.

Q Have you ever asked him for the money?

A Pardon?

Q Did you ever ask him for the money?

A Since I have been arrested? No.

Q And your understanding with Harry was that you were going to be paid \$200 a delivery, right?

A Yes.

Q So that if you earned about \$2000 and we take away the deliveries to Logan, for which you didn't get paid, would it be correct to say that you made 10 deliveries for which you got paid?

A It would be fair to say that, yes, sir.

I think when Mr. Panzer was going through it, I think it came to 11.

Q All right. I am going to go through those with you a little bit, too.

The first deliveries were, I think you testified you made about two or three deliveries to Hattie Ware's apartment, right?

A Yes.

Q One to Al Greene?



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Provitera-cross

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A That was with one to Hattie Ware's.

Q Okay. We won't add that.

Didn't you make some deliveries on Rosedale  
Avenue, too?

A Yes.

Q About how many was that?

A About two.

Q So that brings us up to four or five, right?

A Yes.

Q How many deliveries did you make to Tennessee?

A I didn't know exactly that they were to Tennessee on all those occasions, but I think it was three occasions in there, at the factory, the bar, and the Dairy Queen.

Q So that brings us to seven or eight, right?

A Right.

Q -- You said you made some deliveries to Allen. Did you ever make any deliveries to Allen where nobody else was present or at least -- I will withdraw that.

Did you ever make any deliveries to Allen where you didn't see Henry Salley? ... didn't see Henry Salley ... didn't see Henry Salley ...

A Yes.

Q How many deliveries did you make to Allen where you did not see Henry Salley present?

A To my recollection, it was one.

Q When was the first time that you ever saw Henry Salley?

A To my recollection, it was around September or October.

Q Of 1972?

A Yes.

Q Counting that as the first time and going to



1 hp2 Provitera-cross

2 the date that the Federal Government locked you up in  
3 February, 1973, how often did you see Henry Salley, on  
4 how many occasions?

5 A Three.

6 Q On these three occasions, on how many of them  
7 was your brother-in-law Harry Pannirello present?

8 A Two.

9 Q The first time, drawing your attention to the  
10 first time you saw Henry Salley, where was that?

11 A At Howard Johnson's.

12 Q Could you be a little more specific? Was it  
13 inside, outside? inside, outside? inside, outside?

14 A The parking lot. The parking lot.

15 Q You didn't go in the restaurant on that occasion,  
16 did you?

17 A Not that I recall.

18 Q Was Allen present at the time that you first  
19 saw Salley?

20 A Yes.

21 Q In fact, Allen introduced you to Salley, right?

22 A Yes.

23 Q And was Harry present at the time that Allen  
24 introduced you to Salley?

25 A Yes.

hp3

Provitera-cross

Q On that occasion you wouldn't have known who Salley was if it hadn't been for the fact that Allen introduced him, right?

A Yes.

Q Any narcotics transaction take place at that time?

A Yes.

Q Did you make a delivery at that time?

A Yes.

Q Who did you make the delivery to?

A Who did I give the package to?

Q Right.

Q Right.

A To Allen.

A To Allen.

Q Salley didn't handle the package on that occasion, did he?

A Not to my recollection.

Q Salley didn't handle any money on that occasion, did he?

A Not to my recollection.

Q What was the second time that you saw Salley?

A Approximately a couple of weeks after that.

Q And where was that?

A In Howard Johnson's parking lot.

Q Will you describe how that came about?



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Provitera-cross

1  
2 A I pulled up in my car to the parking lot and  
3 Salley came over and got in my car.

4 Q At that time he didn't introduce himself, did he?

5 A No.

6 Q You knew him already?

7 A Yes.

8 Q Was Harry present?

9 A No.

10 Q Was Allen present?

11 A No.

12 Q When was the third occasion?

13 A The third occasion was shortly after the second  
14 occasion.

15 Q And when was that, sir? Was it a month?

16 A No, shortly after.

17 Q The first occasion you said was late September,  
18 perhaps early October, right?

19 A Yes.

20 Q The second occasion was how much after?

21 A To my recollection, a couple of weeks, two.

22 Q So that would take us maybe into the middle of  
23 October, right?

24 A Or early November.

25 Q Let's see. If the first occasion was late

hp5

Provitera-cross

September or early October, two weeks later, would that take us into November, sir?

A No. That would be October, yes.

Q And the third occasion was how much after the second?

A Shortly, a week or two weeks.

Q What happened on that third occasion when you met him?

A -- That was the occasion where I was with Harry and we pulled up and we met Salley in the parking lot and we went into -- Harry asked Salley if Allen was there and he said he wasn't, that he was expecting him, he was flying in, and we went into the Howard Johnson's and we had something to eat for a half-hour or so and we went back outside and then Harry and I left and as we were pulling out Harry spotted a taxi and he said it was Allen and we turned around and we went back and we met Allen in the parking lot and then we went with Allen to Salley's room.

Q You went with Allen into Salley's room, right?

A Yes.

Q Allen didn't open the door of Salley's room from the inside, did he, at that time?

A Open the door from -- he wasn't in the room. We went with him to the room.



hp6

Provitera-cross

Q That's right. So he couldn't have opened it from the inside, right?

A Right.

Q He couldn't have let you in?

A Right.

Q He was outside?

A Right.

Q If I were to tell you that your brother-in-law testified here and said that on the occasion where you were in the restaurant that you and he then went to the room and the door was opened by Allen, would that refresh your recollection of what happened?

MR. ENGEL: Objection, your Honor. That is improper.

THE COURT: Yes. I will sustain it.

Q If I were to tell you that your brother-in-law Harry, your boss in your criminal activities, testified here that he saw Salley only once, would that refresh your recollection?

MR. ENGEL: Objection on the same ground.

THE COURT: Sustained.

Q Did you deliver any heroin that day in the room or in the restaurant? On that third occasion did you deliver any heroin?

hp7

Provitera-cross

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2 A I don't recall at this moment.

3 Q Didn't Mr. Engel ask you about that yesterday?

4 A Did he?

5 Q I am asking you, sir.

6 A I don't remember if he did or if he didn't.

7 Q You don't remember what Mr. Engel asked you  
8 yesterday?

9 A No.

10 Q But you do remember meeting Salley three times  
11 in September, October and November of '72?

12 A Yes.

13 Q And you don't remember whether you delivered any  
14 heroin on that third occasion?

15 A Not at this moment, no.

16 Q You said that you have seen your brother-in-law  
17 Harry Pannirello in this courthouse this week, is that right?

18 A I don't recall saying that.

19 Q You don't recall saying that yesterday?

20 A No.

21 Q But you recall that you met Mr. Salley three  
22 times in the fall of '72?

23 A Yes, I do.

24 Q Did you meet your brother-in-law?

25 A No.



1 hp8

Provitera-cross

2 Q You never met your brother-in-law this week?

3 A No.

4 Q You are sure of that?

5 A Yes.

6 Q You are as sure of that as the fact that you met  
7 Henry Salley in the Howard Johnson's, right?

8 A Yes.

9 MR. POLLAK: May I have a moment, your Honor.

10 Q Mr. Provitera, let me show you page 3043 of  
11 the transcript. I ask you to look at it and see if that  
12 refreshes your recollection about what testimony you gave  
13 yesterday on cross-examination by Mr. King.

14 MR. ENGEL: Did you say 3043, Mr. Pollak?

15 MR. POLLAK: That's correct.

16 A The question says --

17 Q Yes or no, sir. Does that refresh your recol-  
18 lection?19 You want to look at the page before to see who  
20 you were talking about?

21 A Yes.

22 Q Please do.

23 Does that refresh your recollection, sir?

24 A My recollection as to what, sir?

25 Q First, as to whether you testified that you spok

1 hp9

Provitera-cross

2 to your brother in the courthouse this week or that you  
3 testified yesterday that you spoke to your brother in the  
4 courthouse this week or saw him.

5 A That didn't say anything like -- that's about my  
6 lawyer, when I spoke to my lawyer.

7 Q Let me help you, sir. Were you asked this  
8 question by Mr. King and did you give this answer, on page  
9 3043, about two-thirds of the way down:

10 "Q Yes, you or your brother-in-law and his brother.

11 "A I saw him yesterday in the building."

12 Were you asked this question?

13 A That was referring to my lawyer, referring to my lawyer.

14 Q You saw your lawyer in the building yesterday,

15 sir?

16 A Yes. It would be the day before yesterday.

17 That was yesterday's testimony.

18 Q Oh you saw your lawyer in the building. What  
19 is your lawyer's name, sir?

20 A Mr. Mitchell.

21 Q And he was in the building the day before yester-  
22 day?

23 A Yes.

24 Q I take it that is not John Mitchell, is it?

25 A He is in the building too, I understand.



hp10

Provitera-cross

Q Would you be good enough to give me the full name of your lawyer?

A I don't know his first name. Just Mr. Mitchell.

Q Perhaps it is John then.

How about your brother-in-law? Did you see him, Harry Pannirello, Harry the Horse Pannirello? Did you see him?

A When?

Q Yesterday.

A No.

Q The day before?

A No.

A No.

Q The day before that? The day before that?

A No.

Q When was the last time you saw Harry the Horse Pannirello?

A About two weeks ago.

Q Where was that?

A In one of the offices in this building.

Q Whose office did you see him in?

A Mr. Engel's.

Q At that time were you reviewing your testimony and his testimony in this case with Mr. Engel?

A At the time that I spoke to him?

hp11

Provitera-cross

Q On that occasion where you and Harry were in Mr. Engel's office.

A No. We were just -- I was waiting to go in Mr. Engel's office, we were in an outer office, and Harry passed by in the hallway and when he saw me he stopped in.

Q Did you ever discuss with Harry your testimony in this case?

A Discuss my testimony? No.

Q Yes, what you were going to say.

A No.

Q Or did you ever discuss his testimony with him?

A No.

A No.

A No.

Q What he was going to say? What he was going to say?

A No.

Q Never?

A No.

Q Never happened?

A Never happened.

Q Did anybody tell you at any time this week that your brother-in-law Harry was unable to identify Henry Salley in this courtroom?

A No, sir.

Q Nobody ever told you that?

A No, sir.



hpl2

Provitera-cross

1

2

Q Not Mr. Engel?

3

A Nobody, sir.

4

Q Not Mr. Phillips either?

5

A Nobody, sir.

6

Q Did you ever talk to Mr. Phillips?

7

A Yes.

8

Q When did you last talk to Mr. Phillips?

9

A I said hello this morning as he was going into

10

the men's room.

11

Q Aside from saying hello, when was the last time

12

you talked to Mr. Phillips?

13

A Sunday.

A Sunday.

A Sun

14

Q And where was that?

And where was that?

15

A In Mr. Engel's office.

16

Q And I take it at that time he was not in such an

17

urgent rush?

18

A Right, sir.

19

Q And what was that conversation about?

20

A Mr. Engel was asking me to go over my involve-

21

ment in the case and Mr. Phillips was sitting listening in.

22

Q How many days have you been down in the court-

23

house this week?

24

A Today is three.

25

Q So that your first day was Wednesday, right?

hp13

Provitera-cross

1  
2 A No. My first day was Tuesday.

3 Q I am sorry. Your first day was Tuesday.

4 When you are in the courthouse when you are not  
5 testifying you are back there in the witness room, aren't  
6 you?

7 A Yes.

8 Q What time did you get to the courthouse on Tues-  
9 day, Mr. Provitera?

10 A I think, roughly 9 o'clock.

11 Q Where did you go when you got to the courthouse?

12 A To the witness room.

13 Q Directly to the witness room? to the witness room

14 A Yes.

15 Q That is where you had been told to report, right?

16 A Yes.

17 Q You weren't here on Monday then?

18 A No, I wasn't.

19 Q How about Saturday? Were you here?

20 A No, I wasn't.

21 Q How about last week? Were you here any days  
22 of last week?

23 A Yes, I was.

24 Q What days were you here last week?

25 A I don't recall what days they were.



hpl4

Provitera-cross

1

2

Q You don't work on the weekend, do you?

3

A No.

4

5

Q In order for you to come here you took time off from work, didn't you?

6

A No. I came after work, in the evening.

7

Q When you came last week you came in the evening?

8

A Yes.

9

10

Q You weren't here at all last week during the day?

11

A Not to my recollection, no.

12

Q What time did you get here last week?

13

A Around 6 or 7. Around 6 or 7

14

Q Even though you don't recall the exact days, how many days of last week were you here?

15

16

A Two, possibly three.

17

Q And each time that was around 6 or 7?

18

A Yes.

19

20

21

22

23

24

25

